

AMENDED IN SENATE MAY 5, 1997

SENATE BILL

No. 1317

Introduced by Senator Lee
(Coauthors: Senators Vasconcellos and Watson)
(Coauthors: Assembly Members Aroner, Kuehl, and Murray)

February 28, 1997

An act to amend Sections 667 and 1170.12 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1317, as amended, Lee. Sentencing: prior convictions.

Existing law, amended by initiative statutes, specifies the punishment for persons who are convicted of a felony who have ~~one~~ 2 or more prior violent or serious felony convictions. The initiative statutes provide that any amendment of their provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house.

This bill instead would provide that this punishment applies to persons who are convicted of a violent or serious felony who have ~~one~~ 2 or more prior violent or serious felony convictions. Because it would amend initiative statutes, this bill requires a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has ~~been convicted of a violent felony, as defined in subdivision (e) of Section 667.5, or a serious felony, as defined in subdivision (e) of Section 1192.7, and it has~~

1 *been convicted of a felony and it has* been pled and
2 proved that the defendant has one or more prior felony
3 convictions as defined in subdivision (d), the court shall
4 adhere to each of the following:

5 (1) There shall not be an aggregate term limitation for
6 purposes of consecutive sentencing for any subsequent
7 felony conviction.

8 (2) Probation for the current offense shall not be
9 granted, nor shall execution or imposition of the sentence
10 be suspended for any prior offense.

11 (3) The length of time between the prior felony
12 conviction and the current felony conviction shall not
13 affect the imposition of sentence.

14 (4) There shall not be a commitment to any other
15 facility other than the state prison. Diversion shall not be
16 granted nor shall the defendant be eligible for
17 commitment to the California Rehabilitation Center as
18 provided in Article 2 (commencing with Section 3050) of
19 Chapter 1 of Division 3 of the Welfare and Institutions
20 Code.

21 (5) The total amount of credits awarded pursuant to
22 Article 2.5 (commencing with Section 2930) of Chapter
23 7 of Title 1 of Part 3 shall not exceed one-fifth of the total
24 term of imprisonment imposed and shall not accrue until
25 the defendant is physically placed in the state prison.

26 (6) If there is a current conviction for more than one
27 felony count not committed on the same occasion, and
28 not arising from the same set of operative facts, the court
29 shall sentence the defendant consecutively on each count
30 pursuant to subdivision (e).

31 (7) If there is a current conviction for more than one
32 serious or violent felony as described in paragraph (6),
33 the court shall impose the sentence for each conviction
34 consecutive to the sentence for any other conviction for
35 which the defendant may be consecutively sentenced in
36 the manner prescribed by law.

37 (8) Any sentence imposed pursuant to subdivision (e)
38 will be imposed consecutive to any other sentence which
39 the defendant is already serving, unless otherwise
40 provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a felony shall be defined as any of the following:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if all of the following are true:

(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony.

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:

(1) If a defendant has one prior felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2) (A) If a defendant has *been convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, and has two or more prior felony convictions as defined in subdivision (d) that have been pled and proved*, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of the following:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall

1 commence at the time the person would otherwise have
2 been released from prison.

3 (f) (1) Notwithstanding any other law, subdivisions
4 (b) to (i), inclusive, shall be applied in every case in
5 which a defendant has a prior felony conviction as
6 defined in subdivision (d). The prosecuting attorney shall
7 plead and prove each prior felony conviction except as
8 provided in paragraph (2).

9 (2) The prosecuting attorney may move to dismiss or
10 strike a prior felony conviction allegation in the
11 furtherance of justice pursuant to Section 1385, or if there
12 is insufficient evidence to prove the prior conviction. If
13 upon the satisfaction of the court that there is insufficient
14 evidence to prove the prior felony conviction, the court
15 may dismiss or strike the allegation.

16 (g) Prior felony convictions shall not be used in plea
17 bargaining as defined in subdivision (b) of Section 1192.7.
18 The prosecution shall plead and prove all known prior
19 felony convictions and shall not enter into any agreement
20 to strike or seek the dismissal of any prior felony
21 conviction allegation except as provided in paragraph (2)
22 of subdivision (f).

23 (h) All references to existing statutes in subdivisions
24 (c) to (g), inclusive, are to statutes as they existed on June
25 30, 1993.

26 (i) If any provision of subdivisions (b) to (h), inclusive,
27 or the application thereof to any person or circumstance
28 is held invalid, that invalidity shall not affect other
29 provisions or applications of those subdivisions which can
30 be given effect without the invalid provision or
31 application, and to this end the provisions of those
32 subdivisions are severable.

33 (j) The provisions of this section shall not be amended
34 by the Legislature except by statute passed in each house
35 by rollcall vote entered in the journal, two-thirds of the
36 membership concurring, or by a statute that becomes
37 effective only when approved by the electors.

38 SEC. 2. Section 1170.12 of the Penal Code is amended
39 to read:

1 1170.12. (a) Notwithstanding any other provision of
2 law, if a defendant has been convicted of a ~~violent felony,~~
3 ~~as defined in subdivision (c) of Section 667.5, or a serious~~
4 ~~felony, as defined in subdivision (c) of Section 1192.7, and~~
5 ~~felony and~~ it has been pled and proved that the defendant
6 has one or more prior felony convictions, as defined in
7 subdivision (b), the court shall adhere to each of the
8 following:

9 (1) There shall not be an aggregate term limitation for
10 purposes of consecutive sentencing for any subsequent
11 felony conviction.

12 (2) Probation for the current offense shall not be
13 granted, nor shall execution or imposition of the sentence
14 be suspended for any prior offense.

15 (3) The length of time between the prior felony
16 conviction and the current felony conviction shall not
17 affect the imposition of sentence.

18 (4) There shall not be a commitment to any other
19 facility other than the state prison. Diversion shall not be
20 granted nor shall the defendant be eligible for
21 commitment to the California Rehabilitation Center as
22 provided in Article 2 (commencing with Section 3050) of
23 Chapter 1 of Division 3 of the Welfare and Institutions
24 Code.

25 (5) The total amount of credits awarded pursuant to
26 Article 2.5 (commencing with Section 2930) of Chapter
27 7 of Title 1 of Part 3 shall not exceed one-fifth of the total
28 term of imprisonment imposed and shall not accrue until
29 the defendant is physically placed in the state prison.

30 (6) If there is a current conviction for more than one
31 felony count not committed on the same occasion, and
32 not arising from the same set of operative facts, the court
33 shall sentence the defendant consecutively on each count
34 pursuant to this section.

35 (7) If there is a current conviction for more than one
36 serious or violent felony as described in paragraph (6) of
37 this subdivision, the court shall impose the sentence for
38 each conviction consecutive to the sentence for any other
39 conviction for which the defendant may be consecutively
40 sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a felony shall be defined as any of the following:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if all of the following are true:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense.

1 (B) The prior offense is listed in subdivision (b) of
2 Section 707 of the Welfare and Institutions Code, or listed
3 in this subdivision as a felony.

4 (C) The juvenile was found to be a fit and proper
5 subject to be dealt with under the juvenile court law.

6 (D) The juvenile was adjudged a ward of the juvenile
7 court within the meaning of Section 602 of the Welfare
8 and Institutions Code because the person committed an
9 offense listed in subdivision (b) of Section 707 of the
10 Welfare and Institutions Code.

11 (c) For purposes of this section, and in addition to any
12 other enhancements or punishment provisions which
13 may apply, the following shall apply where a defendant
14 has a prior felony conviction:

15 (1) If a defendant has one prior felony conviction that
16 has been pled and proved, the determinate term or
17 minimum term for an indeterminate term shall be twice
18 the term otherwise provided as punishment for the
19 current felony conviction.

20 (2) (A) If a defendant has *been convicted of a violent*
21 *felony, as defined in subdivision (c) of Section 667.5, or a*
22 *serious felony, as defined in subdivision (c) of Section*
23 *1192.7, and has two or more prior felony convictions, as*
24 *defined in paragraph (1) of subdivision (b), that have*
25 *been pled and proved, the term for the current felony*
26 *conviction shall be an indeterminate term of life*
27 *imprisonment with a minimum term of the*
28 *indeterminate sentence calculated as the greatest of the*
29 *following:*

30 (i) Three times the term otherwise provided as
31 punishment for each current felony conviction
32 subsequent to the two or more prior felony convictions.

33 (ii) Imprisonment in the state prison for 25 years.

34 (iii) The term determined by the court pursuant to
35 Section 1170 for the underlying conviction, including any
36 enhancement applicable under Chapter 4.5
37 (commencing with Section 1170) of Title 7 of Part 2, or
38 any period prescribed by Section 190 or 3046.

39 (B) The indeterminate term described in
40 subparagraph (A) of paragraph (2) of this subdivision

1 shall be served consecutive to any other term of
2 imprisonment for which a consecutive term may be
3 imposed by law. Any other term imposed subsequent to
4 any indeterminate term described in subparagraph (A)
5 of paragraph (2) of this subdivision shall not be merged
6 therein but shall commence at the time the person would
7 otherwise have been released from prison.

8 (d) (1) Notwithstanding any other provision of law,
9 this section shall be applied in every case in which a
10 defendant has a prior felony conviction as defined in this
11 section. The prosecuting attorney shall plead and prove
12 each prior felony conviction except as provided in
13 paragraph (2).

14 (2) The prosecuting attorney may move to dismiss or
15 strike a prior felony conviction allegation in the
16 furtherance of justice pursuant to Section 1385, or if there
17 is insufficient evidence to prove the prior conviction. If
18 upon the satisfaction of the court that there is insufficient
19 evidence to prove the prior felony conviction, the court
20 may dismiss or strike the allegation.

21 (e) Prior felony convictions shall not be used in plea
22 bargaining, as defined in subdivision (b) of Section 1192.7.
23 The prosecution shall plead and prove all known prior
24 felony convictions and shall not enter into any agreement
25 to strike or seek the dismissal of any prior felony
26 conviction allegation except as provided in paragraph (2)
27 of subdivision (d).

